

UNITED STATES OF AMERICA,
Plaintiff,
v.
ASSOCIATION OF RETAIL TRAVEL AGENTS,
Defendant.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of the Association of Retail Travel Agents in this antitrust proceeding.

On October 25, 1994, the United States filed a Complaint alleging that the Association of Retail Travel Agents (hereinafter "ARTA") had entered into a contract, combination or conspiracy in restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The Complaint alleges that ARTA, a trade association all of whose members are travel agents, and its members agreed on commission levels and other terms of trade on which to transact business with providers of travel services, and encouraged and participated in a group boycott with the intent to induce certain providers of travel services to agree to certain commission levels and practices.

On October 25, 1994, the United States and ARTA filed a Stipulation by which they consented to the entry of a proposed Final Judgment designed to prevent any recurrence of such activity in the future. Under the proposed Final Judgment, ARTA will be enjoined from inviting or encouraging travel agents to deal with travel providers only on agreed terms. This prohibition includes any agreements on specified commission levels. The proposed Final Judgment also prohibits ARTA from adopting or disseminating any rules, policies, or statements that have the purpose or effect of advocating or encouraging such a concerted refusal to deal.

The United States and ARTA have agreed that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Final Judgment, and to punish violations of the Final Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Airlines, hotels, rental car companies, cruise lines and other providers of transportation and accommodations (hereinafter "travel providers") sell a significant proportion of their services to the public through travel agents. Travel agents inform travellers about the price, availability and other details of various travel options and make reservations and sell tickets to the travellers for the travel services they choose. Travel

agents are agents of the travel providers, receiving commissions from the travel providers for sales they make. These commissions vary and are established between individual travel agents and travel providers. These commissions generally are included in the price the consumer pays for airline tickets, hotel accomodations, rental cars, cruises and other travel services. The lower the sales commissions established between individual travel agents and travel providers, the lower the total cost of travel services to the consumer.

ARTA is an association of travel agents. Among its goals are achieving improved commission levels for travel agents and persuading travel services providers to adopt commission policies and practices that are beneficial to travel agents. ARTA members compete with each other and with other travel agents both to sell travel services to the public and to act as selling agents for travel services providers.

On October 16, 1993, ARTA's Board of Directors adopted a document entitled "ARTA Objectives for the Travel Agency Community." Among its Objectives, ARTA stated that it sought a "minimum" ten percent commission on all hotel and car rental sales by travel agents, the elimination of all distribution outlets for airline tickets other than travel agents, and the payment of commissions based on full fares rather than the discounted prices actually paid by travellers.

A few days after adopting the ARTA Objectives, ARTA hosted a press conference attended by its president and two members of its

Board of Directors, in addition to members of the press. Several days after the press conference, one of ARTA's board members announced that his travel agency would cease doing business with certain travel providers whose commission and sales practices did not comport with the ARTA Objectives, and invited other travel agents to join his boycott in support of the ARTA Objectives. Shortly thereafter, at least one other ARTA board member made a similar public announcement.

The Complaint alleges that through those activities, defendant and its members agreed on commission levels and other terms of trade on which ARTA members and other travel agents should transact business with travel providers, and invited, encouraged and participated in a group boycott designed to induce travel providers to agree to those commission levels and terms of trade. The Complaint further alleges that those activities constitute a contract, combination or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment is designed to prevent defendant and its officers, directors and agents from inviting, encouraging or advocating concerted refusals to deal. In addition to enjoining defendant and its officers, directors and agents from engaging in such activities (Section III), it requires defendant to provide an annual summary of the Final Judgment to its members

(Section IV), and requires that its officials provide an annual certification that they have read and understand the Final Judgment (Section IV). The proposed Final Judgment also requires that defendant provide an annual briefing on the requirements of the Final Judgment and on the antitrust laws to its officials (Section V).

The United States is satisfied that the proposed Final Judgment sufficiently resolves the antitrust violations alleged in the Complaint. Compliance with the proposed Final Judgment would prevent any recurrence of the violations alleged in the Complaint, and thus provides complete relief.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured in his business or property as a result of conduct forbidden by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought.

V.

PROCEDURE AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the

proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Roger W. Fones, Chief
Transportation, Energy, and
Agriculture Section
Antitrust Division
Judiciary Center Building
555 4th Street, N.W., Rm 9104
Washington, D.C. 20001

VI.

ALTERNATIVE TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment would be a full trial of the case against ARTA. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the

proposed Final Judgment provides relief that will remedy the violations of the Sherman Act alleged in the United States' Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated: October 25, 1994

Respectfully submitted,

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